

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	
	)	

**COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION  
ON THE  
NOTICE OF PROPOSED RULEMAKING**

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## **SUMMARY OF COMMENTS**

USTelecom believes that no changes to current rules should come from this proceeding arising out of the petition filed by Telecommunications for the Deaf, Inc. Instead, the current closed captioning rules strike a reasonable balance that takes into account not only the needs of those who benefit from closed captioning but also practical marketplace realities. Additional requirements—particularly ones applied to the distributors of video programming, rather than the content providers who are primarily responsible for supplying captioning—are unnecessary at this time.

Consumers have witnessed significant developments in the market for delivery of video programming over the past seven years, including the rapid proliferation of both channels of programming and of captioning. Since the current closed captioning rules were adopted, program providers and distributors have invested considerable resources in captioning, and they generally have met or exceeded the Commission's established captioning benchmarks, despite high costs and limitations in technology. And further change is inevitable as new competitors, including traditional telephone companies and satellite providers, have entered or will enter the video marketplace. These new competitors will accelerate the demand for high quality closed captioning as they seek to win business from customers desiring closed captioning.

When all relevant factors are weighed, USTelecom respectfully submits that the Commission's current regulatory scheme for closed captioning strikes the right balance and, indeed, accomplishes the goals set by Congress. The concerns expressed by advocates for the hearing impaired and raised in the *NPRM* do not warrant further government intervention, such as intrusive monitoring, recordkeeping and reporting requirements. More significantly, there is no justification for additional requirements that would place responsibility on programming

distributors for issues that are outside of distributors' control (*i.e.*, non-technical accuracy of captioning). Instead, the Commission should focus any improvement efforts on the efficiency and efficacy of its enforcement of existing regulations, while affording video programming distributors sufficient flexibility to determine how best to resolve captioning difficulties and meet the needs of their customers and audiences.

In particular, USTelecom submits the following: (1) the Commission should not adopt non-technical quality standards for closed captioning; (2) the Commission should not adopt technical quality standards or specific monitoring procedures; (3) adequate means exist for consumers to contact video programming distributors or lodge complaints regarding closed captioning; and (4) the Commission should not impose additional recordkeeping requirements on video programming providers.

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**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION  
ON THE NOTICE OF PROPOSED RULEMAKING**

The United States Telecom Association (“USTelecom”) represents a broad range of providers of services and suppliers for the converged telecommunications and Internet industries, including many companies that are seeking to serve their customers by offering multichannel video services.<sup>1</sup> USTelecom’s members are committed to providing high quality closed captioning that satisfies the needs of their customers, including, among others, those in the deaf and hard-of-hearing community, those who use captioning to assist in learning English, and others who demand quality closed captioning. USTelecom’s members will work with representatives of these groups and other interested parties to improve the provision of closed captioning and respond to any concerns they may have.

USTelecom believes that no changes to current rules are needed in this proceeding arising out of the petition filed by Telecommunications for the Deaf, Inc. (TDI).<sup>2</sup> Instead, the

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<sup>1</sup>*In the Matter of Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, Notice of Proposed Rulemaking*, CG Docket No. 05-231, 20 FCC Rcd 13211 (2005) (“NPRM”).

<sup>2</sup> *Telecommunications for the Deaf Inc., Petition for Rulemaking*, RM-11065 (July 23, 2004) (*TDI Petition*).

current closed captioning rules strike a reasonable balance that takes into account not only the needs of those who benefit from closed captioning but also practical marketplace realities. Additional requirements – particularly ones applied to the distributors of video programming, rather than the content providers who are primarily responsible for supplying captioning – are unnecessary at this time.

As part of the Telecommunications Act of 1996, Congress prescribed that video programming generally be closed captioned to ensure access to people with hearing disabilities.<sup>3</sup> The carefully crafted rules and implementation schedules subsequently adopted by the Commission struck an appropriate balance between the realities of the video programming marketplace and the desire to make video programming accessible to those with hearing-related disabilities and to others who benefit from closed captioning. As a result, there has been a vast increase in the amount of captioned programming available to consumers. It is estimated that 100 million persons benefit from watching captioned television, only 28 million of whom are deaf or hearing impaired.<sup>4</sup> As of January 1, 2006, the Commission's rules require the captioning of 100% of new non-exempt English language programming.

This rulemaking proceeding affords the Commission an opportunity to evaluate whether video content providers and programming distributors are taking reasonable steps to ensure that “all Americans ultimately have access to video services and programs.”<sup>5</sup> At the same time, the Commission must continue to consider, as it did in establishing the current closed captioning rules, marketplace realities, relevant technical limitations, logistical constraints, and the practical

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<sup>3</sup> 47 U.S.C. § 613. Section 713, Video Programming Accessibility, was added to the Communications Act of 1934 by Section 305 of the Telecommunications Act of 1996. Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

<sup>4</sup> *See infra*, note 14.

<sup>5</sup> H.R. Report 104-458 104<sup>th</sup> Cong., 2d Sess. at 183-84 (Aug. 22, 1996).

effect of its closed captioning rules on the operations of video programming distributors. For example, some of the proposed changes to the rules that are discussed in the *NPRM* could potentially place burdens on programming distributors – such as the requirement to ensure the accuracy of captioning associated with live programming – that would be impossible to meet. The Commission must reject any such unreasonable requirements.

Consumers have witnessed significant developments in the market for delivery of video programming over the past seven years, including the rapid proliferation of both channels of programming and of captioning.<sup>6</sup> Since the current closed captioning rules were adopted, program providers and distributors have invested considerable resources in captioning, and they generally have met or exceeded the Commission’s established captioning benchmarks, despite high costs and limitations in technology.<sup>7</sup> And further change is inevitable as new competitors, including traditional telephone companies and satellite providers, have entered or will enter the video marketplace.<sup>8</sup> These new competitors will accelerate the demand for high quality closed captioning as they seek to win business from customers desiring closed captioning.

When all relevant factors are weighed, USTelecom respectfully submits that the Commission’s current regulatory scheme for closed captioning strikes the right balance and, indeed, accomplishes the goals set by Congress — no drastic overhaul is needed.

Notwithstanding the legitimate concerns about accuracy and technical glitches raised by

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<sup>6</sup> See *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd. 2755, ¶ 4 (2005).

<sup>7</sup> See generally “The State of Closed Captioning in the United States,” Annenberg Public Policy Center (2003); see also “Caption-Makers For Live TV are Few and Far Between,” Cox News Service (Mar. 26, 2004).

<sup>8</sup> *Id.* at ¶¶ 126-30.

advocates for the hearing impaired,<sup>9</sup> the Commission should not fail to recognize that video programming providers have made tremendous strides in a relatively short period of time, and that technological and market developments will continue to drive improvements in closed captioning. There is now copious closed captioned programming available to Americans, in contrast with the “limited” availability the Commission found in 1997.<sup>10</sup> Moreover, increased competition in the markets for video production, distribution and captioning services will encourage all providers to improve closed captioning, particularly given the growing demand for closed captioning services even outside of the deaf and hard-of-hearing community.

While there remain challenges, the concerns expressed by advocates for the hearing impaired and raised in the *NPRM* do not warrant further government intervention, such as intrusive monitoring, recordkeeping and reporting requirements. More significantly, there is no justification for additional requirements that would place responsibility on programming distributors for issues that are outside of distributors’ control (*i.e.*, non-technical accuracy of captioning). Instead, the Commission should focus any improvement efforts on the efficiency

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<sup>9</sup> *TDI Petition*, at i, 24-27, 37.

<sup>10</sup> In adopting the closed captioning rules in 1997, the Commission noted that during time periods other than prime time, the amount of closed captioning programming available was limited, particularly programming offered by national and regional non-broadcast networks, and locally originated programming offered by broadcast television stations and cable systems. *See Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report and Order*, 13 FCC Rcd. 3272, 3387 ¶ 10 (August 22, 1997) (*Closed Captioning Report and Order*). Over the past eight years, it would appear that video programming providers and distributors have succeeded in meeting the Commission’s benchmarks for increasing amounts of closed captioned programming, given the dearth of complaints about compliance shortfalls. The Media Access Group at WGBH reports that hundreds of hours of programming, on CBS, NBC, ABC, PBS, Fox, independent stations, and cable networks are now captioned. *See* <http://main.wgbh.org/wgbh/pages/mag/services/captioning/faq/#8>. As of January 1, 2006, when the FCC’s rules require captioning of 100% of new, non-exempt English language programming, see 47 C.F.R. § 79.2, the amount of captioned programming, particularly locally originated, non-network programming, is expected to rise to meet the Commission’s new benchmark.



and efficacy of its enforcement of existing regulations, while affording video programming distributors sufficient flexibility to determine how best to resolve captioning difficulties and meet the needs of their customers and audiences.

**I. THE COMMISSION SHOULD NOT ADOPT NON-TECHNICAL QUALITY STANDARDS FOR CLOSED CAPTIONING.**

In adopting the closed captioning rules, the Commission declined to establish non-technical quality standards.<sup>11</sup> The Commission properly acknowledged that consumers are the best arbiters of quality video programming, and concluded that “consumers can demonstrate their satisfaction or lack of satisfaction with what is shown through their purchase of advertised products, subscriptions to programming services, or contacts with the video programming providers or video programmers.”<sup>12</sup>

First, non-technical standards are simply unworkable. The Commission recognized when rejecting previous proposals to adopt such standards that it would be virtually impossible for video programming providers to monitor millions of hours of television programming for mistakes in spelling and grammar. Accordingly, holding distributors accountable for the content providers’ ability to do so makes even less sense. Programming distributors generally do not receive programming in advance of its transmission to subscribers, and have no opportunity to address non-technical quality issues with the programming. Thus, imposing captioning accuracy obligations on programming distributors would be unreasonable and ineffective.

Further, non-technical quality standards are unnecessary. As the Commission predicted, market forces have fostered and continue to drive improvements in the non-technical quality of closed captions, including accuracy, spelling, placement and style. Quality incentives exist from

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<sup>11</sup> *Closed Captioning Report and Order*, 13 FCC Rcd. at ¶ 222.

<sup>12</sup> *Id.* at ¶ 223.

the creation and insertion of captions through to the distribution of programming to the public. Currently, program providers routinely include accuracy requirements and other non-technical standards in their contracts with captioning services. Likewise, distributors customarily require representations about non-technical quality in their programming contracts and licensing agreements. Therefore, the marketplace is already giving rise to improved quality for closed captioning, without the need for government intervention.

Moreover, burgeoning demand for captioning has spurred competition among captioning providers, which has led to the entrance of additional captioning providers into the marketplace. These new entrants who will face even greater incentives to differentiate their services through the quality of their captioning. This is particularly true because the Commission's current implementation scheme has made captioning increasingly ubiquitous, thereby creating strong additional incentives for video programming providers and distributors to differentiate their programming on the basis of the quality of captioning, rather than just the existence of captioning.

This effect is amplified by the increased demand for closed captioning by more and more users, including not only individuals with hearing disabilities but also others who benefit from watching captioned television.<sup>13</sup> According to the National Court Reporters Association, captioning serves nearly 100 million Americans—28 million deaf and hard-of-hearing individuals, 3.7 million remedial readers, 12 million young children learning to read, 27 million illiterate adults, and 30 million for whom English is a second language.<sup>14</sup> In addition, closed

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<sup>13</sup> As the Commission recognized in the *NPRM*, “closed captioning can be an important tool for both children with hearing disabilities and children without hearing disabilities learning to read, and for millions of persons learning *English as a second language in improving their reading comprehension and spelling skills.*” *NPRM* ¶ 2.

<sup>14</sup> National Court Reporters Association White Paper on Captioning, released September

captioning use is commonplace in public spaces such as health clubs, offices, airports, and bars.<sup>15</sup>

As a result of increased demand, competing captioning providers will be forced to meet higher standards in order to win the business of programming providers and distributors, who in turn must compete to attract new customers. And they will be able to do so more readily as captioners become more experienced and as technologies improve.<sup>16</sup> In short, sufficient market incentives exist to promote non-technical control, and will increasingly serve to ensure the accuracy and other desirable aspects of closed captioning.

## **II. THE COMMISSION SHOULD NOT ADOPT TECHNICAL QUALITY STANDARDS OR SPECIFIC MONITORING PROCEDURES**

In order to “ensure that programming containing closed captions is delivered in a complete manner,” the Commission’s rules currently provide that “video programming providers must pass through any captioning they receive that is included with the video programming.”<sup>17</sup> The Commission’s rules also require video programming distributors “to monitor and maintain their equipment and signal transmissions to ensure that the captioning that is included with the video programming actually reaches consumers.”<sup>18</sup> The *NPRM* seeks comment on whether the “pass through” obligation and the Commission’s monitoring requirement are sufficient to ensure the technical quality of captioning.

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2005, available at [www.ncraonline.org/infonews/press/FedInitiative/whitepaper.pdf](http://www.ncraonline.org/infonews/press/FedInitiative/whitepaper.pdf) (“*NCRA White Paper*”).

<sup>15</sup> *Id.*

<sup>16</sup> Progress in technologies that create captions directly from speech (*i.e.*, voice recognition) has been made, but must be given additional time to develop. Currently, such software is notoriously unreliable, particularly in situations involving multiple speakers with a wide range of voices, accents and inflections. See *Moving to Automated Closed Captioning*, [http://www.tvtechnology.com/features/news/N\\_CloseCaption.shtml](http://www.tvtechnology.com/features/news/N_CloseCaption.shtml) (dialogue text accuracy via voice recognition software still some years away) (March 9, 2005).

<sup>17</sup> *Closed Captioning Report and Order*, 13 FCC Rcd. 3272 at ¶ 211.

<sup>18</sup> *Id.* at ¶ 212.

USTelecom respectfully submits that these requirements, when appropriately implemented, work well, and neither needs modification. Video programming distributors have the technical ability to pass through captioning and have adopted procedures, tailored to their individual circumstances, to ensure that their technical equipment is in proper working order. It is common practice for video programming distributors to monitor their equipment to ensure high quality transmissions of each signal's video, audio, and line 21 closed captioning. The availability of captions is routinely checked, either through active monitoring or spot checks. Similarly, program networks monitor their network transmission to ensure the quality of each program's technical specifications, including video, audio, and closed captions. USTelecom is not aware of any widespread degradation in the technical quality of captions at the re-transmission stage meriting burdensome regulatory intervention. The steps video programming distributors take to make sure their equipment is working properly and the corrective measures they choose to employ are appropriately left to the distributors themselves.

Moreover, where a temporary loss of captioning occurs, the Commission should not disqualify programming from counting towards its captioning benchmarks. Technical failures, whether loss of captioning or loss of audio or video, often are unavoidable. In the rare instances where such difficulties occur, video programming distributors who take reasonable steps to ensure that the closed captioning they receive from content providers is passed through to subscribers should not be penalized for failing to meet the relevant closed captioning benchmarks.

In light of the many closed captioned programming choices available to customers who benefit from captioning, video programming distributors have every incentive to monitor and remedy technical deficiencies or other problems associated with captioning so as not to lose

valuable members of their audience. As with other aspects of programming (*e.g.*, the audio and video), programming providers recognize that they must pass through captions intact in order to satisfy their customers, and they monitor and maintain the overall quality of closed captioning accordingly.

### **III. ADEQUATE MEANS EXIST FOR CONSUMERS TO CONTACT VIDEO PROGRAMMING DISTRIBUTORS OR LODGE COMPLAINTS REGARDING CLOSED CAPTIONING**

The Commission asks whether it should revise its existing complaint procedures to allow for shorter complaint and response times. USTelecom submits that the Commission's rules as they currently exist are sufficient to ensure timely and appropriate responses to viewer complaints.

Often, captioning questions can be quickly resolved, and USTelecom's members are committed to doing so when possible. But where the source of a problem is not clear — it may lie with the distribution system, the program network, or even the complainant's television set — the existing rules appropriately recognize that the distributor may require time to investigate and respond to a particular situation. Requiring video programming distributors to designate specific individuals to immediately handle captioning complaints or questions and undertake additional steps to inform consumers and the Commission about personnel changes is simply impractical and unnecessary. Moreover, forcing distributors to handle all requests or complaints in a rigid manner dictated by intrusive new rules might eliminate flexibility that would actually make it easier for providers to resolve some complaints in as efficiently as possible.

#### **IV. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL RECORDKEEPING REQUIREMENTS ON VIDEO PROGRAMMING PROVIDERS**

The Commission twice has rejected proposals to add to its captioning rules a reporting obligation, stating that recordkeeping requirements or the filing of periodic reports would be “unnecessarily burdensome and administratively cumbersome.”<sup>19</sup> In order to address potential complaints, the Commission stated that video programming distributors are required to “maintain records sufficient to demonstrate compliance.”<sup>20</sup> The Commission should again eschew the notion that additional recordkeeping requirements are necessary for proper enforcement of the closed captioning rules.

Requiring MVPDs to file “captioning compliance reports, on a quarterly basis, within 30 days following the end of the previous quarter,”<sup>21</sup> would serve only to drain the resources of video programming distributors and the Commission, and would inevitably lead to increased costs for consumers. Such requirements are all the more unnecessary as the benchmark for captioning 100% of new non-exempt English language programming approaches. After this benchmark goes into effect on January 1, 2006, it will become relatively easy for complainants to demonstrate non-compliance with the rules, therefore video programming distributors have additional incentive to self-police. Even so, given that digital technology has allowed many programming distributors to carry hundreds of program networks, monitoring each one for captioning compliance would be unwieldy and hugely expensive, if not impossible.

As the Commission contemplated when it adopted the closed captioning rules, however, program suppliers now are commonly obligated through their contractual arrangements with

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<sup>19</sup> *Closed Captioning Report and Order*, 13 FCC Rcd at ¶ 244.

<sup>20</sup> *Id.*

<sup>21</sup> *TDI Petition* at 19.

distributors to comply with the Commission's closed captioning rules. This approach makes tremendous practical sense given that the program suppliers are in the best position to ensure compliance with closed captioning requirements other than technical issues concerning distribution. For example, distributors generally have no access to the content, or ability to monitor or alter the associated closed captioning, before a program is transmitted. Thus, the Commission should continue to permit video programming distributors to rely on certifications of compliance from the various networks they carry.<sup>22</sup> These certifications, often requested in writing, are the only practical means through which a video programming distributor may confirm compliance with the closed captioning rules. If the Commission determines that it needs to perform a "check" as to whether video programming providers are meeting their captioning obligations, the existing rules afford the agency the discretion to do so.<sup>23</sup>

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<sup>22</sup> *Closed Captioning Report and Order*, 13 FCC Rcd at ¶ 28.

<sup>23</sup> The Commission has stated its intention to conduct random audits of captioning similar to the audits used to monitor compliance with other Commission rules. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Order on Reconsideration, 13 FCC Rcd 19973 at ¶ 118 (Oct. 2, 1998).

## V. CONCLUSION

Enforcement of existing closed captioning regulations, rather than burdensome and expensive new regulation, should be permitted to resolve the technical and non-technical issues associated with the provision of closed captioning, and to remedy other concerns raised by the hearing impaired community. And both the existing closed captioning rules and ongoing market changes will address the concerns raised in the *NPRM*. Accordingly, there is no need for the Commission to revise its existing closed captioning rules at this time.

Respectfully submitted,

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